

Summary of Changes to Florida Code Required Prior to CWA 404 Delegation

Issue #	CWA Reg Requirement (40 CFR 233.41(a)(3))	Current Florida Statute and its shortcomings	Required amendments
1	<p>Possess authority to prosecute persons who “willfully or with criminal negligence” discharge fill to WOTUS w/o or in violation of a permit.</p> <p>With regard to these violations as well as the false statement/tampering crimes described below, state law must impose burden of proof and degree of knowledge or intent “no greater than the burden of proof or degree of knowledge or intent EPA must bear when it brings an action”</p>	<p>Florida’s CWA statute contains three crimes: two which require proof of harm (felonies for willful violations, misdemeanors for heightened negligence violations) and a third which requires proof of willfulness.</p> <p>(1) Felony penalties, inc. a \$50K fine, for (a) willful violators who (b) cause “harm or injure human health or welfare, animal, plant, or aquatic life or property.” FS373.430(1)(a) &amp; (3)</p> <p>(2) Misd. penalties, inc. a \$5K fine, for violators whose “reckless indifference or gross careless disregard” causes “harm or injure[s] human health or welfare, animal, plant or aquatic life or property.” 373.430(1)(a) &amp; (4)</p> <p>(3) Misd. penalties, inc. \$10K fine, for willful violations of any sort, inc. DWOP, permit violations, false statements. 373.430(1)(b)&amp;(c) &amp; (5)</p> <p><b>Does not allow prosecution of negligent violations with a burden of proof and degree of knowledge or intent no greater than that borne by EPA.</b></p>	<p><b>Amend 373.430(5) to address not only willful but also negligent violations.</b></p>
2	<p>Possess authority to obtain criminal fines of “at least \$10,000 per day” for the two above-referenced violations</p>	<p>Does allow imposition of \$10K fines against willful violators. 373.430(1)(b)&amp;(c) &amp; (5)</p> <p><b>As regards negligent violations, does not allow imposition of \$10K fines. 373.430(1)(a) &amp; (4)</b></p>	<p><b>Amendment referenced above will address these issues.</b></p>
3	<p>Possess authority to prosecute persons who make knowing false statements in required records or tampers with monitoring devices/methods</p>	<p><b>Does not contain authority to criminally prosecute knowing false statements or tampering (requires proof of willfulness). 373.430(1)(b)&amp;(c) &amp; (5)</b></p>	<p><b>Enact new provision authorizing criminal prosecution of knowing false statements and/or tampering with a monitoring method.</b></p>
4	<p>Possess authority to obtain criminal fines of “at least \$5,000 for each instance of [the above-referenced] violation.”</p>	<p><b>See above</b></p>	<p><b>Ensure provision referenced immediately above authorizes fines of at least \$5000.</b></p>